

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

STUDENTS FOR FAIR ADMISSIONS,  
INC.,

Plaintiff,

v.

PRESIDENT AND FELLOWS OF  
HARVARD COLLEGE (HARVARD  
CORPORATION),

Defendant.

Civil Action No. 1:14-cv-14176-ADB

**\*\*\*The attached envelope contains documents that are the subject of a Protective Order of this Court and cannot be opened or its contents made available to anyone other than counsel of record for the parties or Court personnel.\*\*\***

**PLAINTIFF'S MOTION TO FILE UNDER SEAL**  
**EXHIBIT AND UNREDACTED MEMORANDUM OF LAW**  
**ASSOCIATED WITH MOTION TO COMPEL**

Pursuant to Local Rule 7.2 and in reaction to Defendant, the President and Fellows of Harvard College ("Harvard"), designating certain documents as "protected material" under the Stipulated Protective Order (Dkt. No. 55), Plaintiff, Students for Fair Admissions, Inc. ("SFFA"), hereby moves this Honorable Court for an order sealing (a) certain deposition testimony that SFFA used as an exhibit ("Protected Testimony") in connection with its recently filed motion to compel (Dkt. No. 64) and (b) the unredacted version of SFFA's memorandum of law in support of its motion to compel (Dkt. No. 65 - "Memorandum of Law") which discusses and references the substance of the Protected Testimony.

Yesterday, after the close of business, SFFA publicly filed its motion to compel. SFFA also publicly filed a redacted version of the Memorandum of Law, in which discussion and references to the substance of the Protected Testimony were redacted, as

well as a declaration from SFFA's counsel (Dkt. No. 66 - "Strawbridge Declaration") which did not attach the Protected Testimony.

The Protected Testimony—portions of deposition testimony from Marlyn McGrath, Harvard's Director of Admissions—is part of Exhibit B to the Strawbridge Declaration. The pages of that testimony which Harvard approved for public filing outright, or with limited redactions, were publicly filed along with the Strawbridge Declaration. Pursuant to §§ 10 and 13 of the Stipulated Protective Order, the pages of that testimony which Harvard has indicated it intends to designate as either "Confidential" or "Highly Confidential – Attorneys' Eyes Only" have not been publicly filed. It was noted when the motion to compel was filed that the Protected Testimony, along with the unredacted Memorandum of Law, would be filed separately under seal via this motion. The Protected Testimony and the unredacted Memorandum of Law have been delivered to the Court in a sealed envelope along with this motion.

The Protected Testimony principally concerns Harvard's undergraduate application review process. In light of the Court's expressed concerns about ensuring public access to documents used in this case and SFFA's belief that much of the substance of the Protected Testimony is already publicly available information, SFFA asked Harvard to consent to the public filing of the Protected Testimony, but Harvard declined to do so.

Harvard was made aware of this motion and assents to SFFA's request to file the Protected Testimony and unredacted Memorandum of Law under seal, but disagrees with SFFA's assertion that the underlying information is available from public sources.

WHEREFORE, if the Court agrees with Harvard's decision to designate the Protected Testimony as "Confidential" or "Highly Confidential – Attorneys' Eyes Only," it is respectfully requested that the Court grant this motion and allow (a) the Protected Testimony and (b) the unredacted Memorandum of Law to be filed under seal and to be viewed only by the Judge, her clerk(s) and Court personnel in conjunction with SFFA's motion to compel.

Respectfully submitted,

By: /s/ William S. Consovoy  
William S. Consovoy

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Dated: July 17, 2015

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*Counsel for Plaintiff Students for Fair  
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**CERTIFICATE OF CONFERENCE**

In accordance with Local Rules 7.1(a), I hereby certify that Harvard's counsel was made aware and sent a copy of this motion before it was filed and assents to SFFA's request to file the Protected Testimony and unredacted Memorandum of Law under seal.

/s/ Patrick Strawbridge

Patrick Strawbridge

**CERTIFICATE OF SERVICE**

In accordance with Local Rule 5.2(b), I hereby certify that this document was filed through the Court's ECF system on July 17, 2015 and will be sent electronically to the registered participants identified on the Notice of Electronic Filing. The two attachments to this motion were delivered to the Court in a sealed envelope.

/s/ Benjamin C. Caldwell

Benjamin C. Caldwell

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